

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

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DATE: April 11, 2014

TO: Danell Scarborough, Executive Director, Citizens' Review Board on Police Practices

FROM: City Attorney

SUBJECT: Police Interactions with Individuals/Consideration of the Individual's Physical Characteristics

INTRODUCTION

The Citizens Review Board (CRB) has raised concerns regarding when a police officer contacts a citizen based on the fact that a crime has occurred in the neighborhood and the citizen contacted has a characteristic resembling the suspect's description. Further, the officers will describe this contact as a consensual contact or encounter instead of a detention or stop. However, to the individual contacted and the community, the perception is that it was a detention or stop, rather than a consensual contact.

To assist the CRB, we provide the legal standards used by the courts to evaluate these types of interactions between police officers and individuals, including consideration of an individual's physical characteristics.

The concerns as presented pertain to consensual encounters and detentions; therefore, the standard of probable cause for arrest will not be discussed in this memorandum. Please note that SDPD Procedure 4.01 addresses stops, detentions, and pat downs (attached). Although the Procedure includes operational and policy determinations, it also incorporates the Fourth Amendment's legal requirements related to stops and detentions.

QUESTIONS PRESENTED

1. When a police officer contacts an individual, can the officer consider the individual's physical characteristics?

2. What legal significance, if any, is given to the subjective perception of the individual contacted by the police officer?

SHORT ANSWERS

1. Depending on the nature of the interaction between a police officer and an individual and the totality of the circumstances, physical characteristics may be considered and is a fact specific determination.

2. The subjective perception of the individual contacted by a police officer does not bear on the legality of the interaction.

ANALYSIS

In order to address the questions presented, it is necessary to set forth the general law on searches and seizures. Both the federal and state constitutions provide that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall¹ not be violated. U.S. Const. amend. IV; Cal. Const. art. I, § 13. Not all interactions between police officers and citizens involve seizures of persons. "Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen" will courts conclude that a seizure has occurred. *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968). Circumstances constituting a seizure may include the presence of several officers, an officer's display of a weapon, physical touching of the person, or the use of language or tone of voice indicating that compliance with the officer's request is necessary. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). No seizure has occurred when police ask questions of an individual, ask to examine the individual's identification, and request consent to search "so long as the officers do not convey a message that compliance with their request is required." *Florida v. Bostick*, 501 U.S. 429, 437 (1991). Further, no seizure or detention has occurred if an officer wishes "to question the person not as a suspect but merely as a witness to a crime." *In re Manuel G.*, 16 Cal. 4th 805, 824 (1997), citing *In re Tony C.*, 21 Cal. 3d 888, 895 (1978).

I. THE LEGALITY OF CONSIDERING AN INDIVIDUAL'S PHYSICAL CHARACTERISTICS DEPENDS UPON THE NATURE OF INTERACTION BETWEEN A POLICE OFFICER AND AN INDIVIDUAL

The legal description of the interactions between police officers and individuals that are relevant here are the interaction known as a "consensual encounter" and the interaction known as a "detention". Each are described more fully below.

¹Article I, section 13 of the California Constitution states "may" instead of "shall."

A. Consensual Encounters

Consensual encounters are voluntary interactions between individuals and police. As such, they do not involve the “seizure” of a person within the meaning of the Fourth Amendment and therefore do not trigger Fourth Amendment scrutiny. *Bostick*, 501 U.S. at 434. The critical test is whether, taking into account the totality of the circumstances surrounding the encounter, the police conduct would have “communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *Michigan v. Chesternut*, 486 U.S. 567, 569 (1988). So long as a reasonable person feels free to “disregard the police and go about his business,” the encounter is consensual and no reasonable suspicion² is required. *California v. Hodari D.*, 499 U.S. 621, 628 (1991).

[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, by putting questions to him if the person is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions.

Florida v. Royer, 460 U.S. 491, 497 (1983), citing *Dunway v. New York*, 442 U.S. 200, 210, n.12 (1979); *Terry*, 392 U.S. 1, 31-33 (1968).

If a reasonable person would not believe that he or she could end the contact and walk away, then the person is being detained, and the officer would need to have reasonable suspicion to avoid an illegal detention.

During consensual encounters, people contacted may not be stopped, detained, frisked, or searched against their will. The key factor is that they remain free to leave or not cooperate. *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). They may not be required, forced, or coerced to answer questions or to cooperate. If they do not give consent³ to the encounter, or refuse to answer questions, they must be allowed to leave, unless the officer has developed reasonable suspicion to detain them. *Id.* at 556. Whether or not a person resembles a suspect is not a factor in a consensual encounter. There is no “seizure” of the person, therefore the Fourth Amendment is not implicated.

B. Detentions

A “detention” is a seizure of the person limited in nature, scope, and purpose. The Supreme Court held that an officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable suspicion that criminal activity is afoot. *Terry*, 392 U.S. at 30. In *Terry*, the officer observed suspicious behavior of suspects walking up

² “Reasonable suspicion” is discussed in Section 1B.

³ Consent itself is determined by the totality of the circumstances, and not contingent upon being expressly told that one can decline to cooperate. *Id.* at 555.

and down the street several times and looking into a certain store window; the officer stopped and patted them down, finding guns in their pockets. The Court upheld the search.⁴ In determining whether or not an officer has "reasonable suspicion," the courts look at the totality of the circumstances, including officer training and experience. "The concept of reasonable suspicion . . . is not 'readily or even usefully, reduced to a neat set of legal rules.'" *United States v. Sokolow*, 490 U.S. 1, 7 (1989) citing *Illinois v. Gates*, 462 U.S. 213, 232 (1983). In determining the validity of stops, "the totality of the circumstances – the whole picture" must be considered. *United States v. Cortez*, 449 U.S. 411, 417 (1981).

The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common sense conclusions about human behavior; jurors as factfinders are permitted to do the same - and so are law enforcement officers.

Id. at 418.

"[I]t is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure . . . 'warrant a man of reasonable caution in the belief' that the action taken was appropriate[.]" *Terry*, 392 U.S. at 21-22, citing *Carroll v. United States*, 267 U.S. 132 (1925). "[T]he facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and the same involvement by the person in question." *In re Tony C.*, 21 Cal. 3d 888, 893 (1978). Due weight must be given to the specific reasonable inferences which he is able to draw from the facts in light of his experience. *Terry*, 392 U.S. at 27.

The reasonableness of seizures or detentions depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *Pennsylvania v. Mimms*, 434 U.S. 106, 109 (1977), citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975). When an officer contacts an individual because a crime has occurred in the neighborhood and that individual has a resembling characteristic to the suspect's description, "[i]n the absence of any basis for suspecting [that individual] of misconduct, the balance between the public interest and the individual's right to personal security and privacy tilts in favor of freedom from police interference." *Brown v. Texas*, 443 U.S. 47, 52 (1979).

⁴If the officer reasonably believes the individual is armed and presently dangerous to the officer or to others, the officer may even conduct a *Terry* "frisk" or "pat-down" for weapons. *Id.* at 30. This frisk or pat-down "is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." *Id.* at 17, fn. omitted. Therefore, a frisk or pat-down for weapons is not justified unless the officer can point to specific articulable facts which give rise to a reasonable suspicion that the suspect is armed and dangerous. *Id.* at 21.

While mere generalized physical characteristics may not be enough, there are many other factors that courts consider in determining the legality of a detention. There is no bright line rule or types of factors that are determinative. Each case rests uniquely on its own facts. The following are examples of what courts look to.

In *In re Tony C.*, the officer observed the 13-year-old black minor defendant with another black youth walking down the street at 12:45 in the afternoon on a Tuesday. *In re Tony C.*, 21 Cal. 3d at 888. The officer stopped the youths and began questioning them as to their identities, home addresses, and the purpose of their presence in the area. One of the reasons the officer asserted as justification for the stop was that the day before he had heard that several burglaries had been reported in the area and "three black males" were being sought in connection with the crimes. *Id.* at 896-97. The court rejected that basis, stating, "A day-old burglary report does not transform a residential neighborhood into a no man's land in which any passerby is fair game for a roving police interrogation." *Id.* at 897. Moreover, the officer had been informed only that the suspects of the prior burglaries were "three black males" and no age specifications. The court did not find it reasonable that such a vague description could lead the officer to suspect the two black minors as the criminals.

To hold otherwise would authorize the police to stop and question every black male, young or old, in an area in which a few black suspects were being sought. Such wholesale intrusion into the privacy of a significant portion of our citizenry would be socially intolerable and constitutionally impermissible.

Id. at 898.

In contrast, *People v. McCluskey*, 125 Cal. App. 3d 220 (1981), involved a deputy sheriff who received a radio call of a robbery committed late at night in a market. The description of the male suspect was "about 5 feet 10 inches tall, brown hair with center part, mustache, between 19-to-21 years old, blue jacket, Chicano." *Id.* at 223. Five minutes later and two to three blocks away from the market, the deputy saw a vehicle with a passenger who was "a 20-year-old Mexican male with dark hair and a dark jacket," and he saw no other vehicles in the area. *Id.* at 226. In a motion to suppress evidence⁵, the trial court granted the motion, concluding that "[I]t is too much of a random stop. You can't stop all young Mexicans driving cars in Vista." *McCluskey*, 125 Cal. App. 3d at 226.

The Court of Appeal reversed. The deputy knew a robbery had recently occurred in the vicinity, the car was traveling in a direction consistent with defendant's involvement in the robbery, and the description for the suspect included ethnic origin, clothing, sex, and age. Therefore, the Court found the stop constitutionally reasonable as it was based on a combination of factors and not solely on the suspect's race or ethnic origin. "The fortuitous fact that one part of this sufficiently

⁵ When a criminal defendant believes his or her Fourth Amendment rights have been violated, he or she may bring a motion to suppress evidence obtained as a result of that violation. Cal. Penal Code §1538.5.

detailed, accurate description of the robber may have included a disproportionate number of persons within the community does not vitiate the reasonableness of the stop." *Id.* at 227.

An area's reputation for criminal activity is an appropriate consideration for determining whether a detention is reasonable under the Fourth Amendment. *People v. Souza*, 9 Cal. 4th 224, 240 (1994). An officer should not ignore a location's relevant characteristics when assessing whether the circumstances are sufficiently suspicious to warrant further investigation. *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). However, an individual's presence in an area of expected criminal activity, standing alone, is insufficient to support particularized reasonable suspicion that the person is committing a crime. *Id.* Courts must be "particularly careful to ensure that a 'high crime' area factor is not used with respect to entire neighborhoods or communities in which minority groups regularly go about their daily business." *United States v. Montero-Camargo*, 208 F.3d 1122, 1138 (9th Cir. 2000). Thus, courts have appraised this factor with caution and have been reluctant to conclude that an area's crime rate transforms otherwise innocent circumstances into suspicious circumstances justifying an individual's seizure. *People v. Walker*, 210 Cal. App. 4th 1372, 1390 (2012).

The time of night is another pertinent factor or circumstance in determining the validity of a detention. *Souza*, 9 Cal. at 241. Again, this factor must be viewed in the totality of the circumstances and "should be appraised with caution." *People v. Superior Court (Kiefer)*, 3 Cal. 3d 807, 825 (1970). Recognizing that it is not a crime for an individual citizen⁶ to be out after dark and that innocent people have jobs, enjoy entertainment, and take walks or exercise in the evenings, this factor, without more, should not be dispositive of the existence of reasonable suspicion.

In *Souza*, the defendant and his companion were standing near a parked car talking to the two occupants of the car at 3:00 a.m. *Souza*, 9 Cal. 4th at 228. The area was almost completely dark, and it was a high crime area known for burglary and drug activities. Suspecting an auto burglary in progress, the officer shined his spotlight into the car. Immediately, the two occupants bent down towards the floorboard and the defendant took off running. Upon contact, a pat-down search yielded a baggie of cocaine. The California Supreme Court found that in applying the totality of the circumstances test, the time of night and the high crime area, coupled with the evasive conduct of the occupants and the flight of the defendant, justified a brief, investigative detention to allow the officer "to resolve the ambiguity in the situation and to find out whether the activity was in fact legal or illegal." *Id.* at 242, citing *In re Tony C.*, 21 Cal. 3d at 894.

Flight in response to the appearance of a uniformed police officer or marked patrol car is behavior that law enforcement may legitimately regard as suspicious and therefore can be a key factor in establishing reasonable cause to detain in a particular case. *Souza*, 9 Cal. 4th at 224. "[h]eadlong flight - wherever it occurs - is the consummate act of evasion: It is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id.* at 239. As with all other circumstances and factors, flight should not be viewed in isolation but with the totality of the

⁶ Here, "individual" refers to adults, as curfew laws do make it illegal for juveniles to be out after specified times.

circumstances. *Id.* "Time, locality, lighting conditions, and an area's reputation for criminal activity all give meaning to a particular act of flight, and may or may not suggest to a trained officer that the fleeing person is involved in criminal activity." *Id.*

Therefore, an individual's physical characteristics may be considered by a police officer when the officer is determining whether or not to detain that individual. A court reviewing that officer's decision will look at the totality of the circumstances, and determine whether those circumstances would cause a reasonable police officer in a like position, in light of that officer's training and experience, to suspect that criminal activity is afoot and the individual detained is connected to that criminal activity.

II. THE INDIVIDUAL'S SUBJECTIVE PERCEPTION OF THE INTERACTION

The courts do not consider the officer's uncommunicated state of mind, or the individual's subjective belief in assessing whether a seizure has occurred. *Muehler v. Mena*, 544 U.S. 93 (2005); *In re Manuel G.*, 16 Cal. 4th at 821, citing *In re Christopher B.*, 219 Cal. App. 3d 455, 460 (1990). The court in the *In re Christopher B.* case stated:

In determining whether an encounter between the police and a citizen is protected under the Fourth Amendment, the court should not only consider all the circumstances involved, but should also consider (1) the public interest served by the seizure, (2) the nature and scope of the intrusion, and (3) the objective facts upon which the law enforcement officer relied in light of the officer's knowledge and expertise. (*Terry v. Ohio*, supra, 392 U.S. at pp. 20-25 [20 L.Ed.2d at pp. 905-908].) [4] (See fn. 2.), [3b] Neither the officer's uncommunicated state of mind nor the subjective belief of the individual citizen is relevant to the determination of whether a police contact is a detention, fn. 2 unless, in the case of the officer, his or her overt action would communicate that state of mind.
(Citations omitted)

In re Christopher B., 219 Cal. App. 3d at 460.

Therefore, the subjective belief or perception of the individual is not relevant to the court's determination of the legality of the interaction.

CONCLUSION

When an individual citizen is contacted by a police officer, that contact is evaluated under the reasonable person standard: if a reasonable person would believe that he or she is free to leave or terminate the encounter, the contact is consensual and no legal justification is needed. The evaluation of this encounter is objective, and not dependent on the uncommunicated state of mind of the officer, or the individual's subjective belief. If, however, the officer has, by some

means of physical force or show of authority, restrained the individual, then a seizure or detention has occurred, and the officer must have reasonable suspicion that criminal activity is occurring or is about to occur and that the person detained is connected to that activity. Reasonable suspicion must be based on the totality of the circumstances and is a fact-driven inquiry. Whether a court will find that an officer has properly utilized a person's resembling characteristics is a fact specific determination.

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Attachment
Doc. No. 755712
MS-2014-6

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: 11/22/2011
NUMBER: 4.01 – LEGAL
SUBJECT: STOP/DETENTION AND PAT DOWN PROCEDURES
RELATED POLICY: 1.04
ORIGINATING DIVISION: TRAINING / VOLUNTEER SERVICES
NEW PROCEDURE:
PROCEDURAL CHANGE:
SUPERSEDES: DP 4.01 – 11/17/2008

I. PURPOSE

This Department procedure establishes guidelines for officers when contacting subjects for the purpose of investigating criminal activity.

II. SCOPE

This procedure applies to all sworn members of the Department.

III. BACKGROUND

The Department understands that direct contact with officers is, to the vast majority of the public, a rare and infrequent event. As a consequence, such contact can often be uncomfortable, awkward, or unnerving for citizens when they do not know why they are being contacted. A way to alleviate this is to provide citizens being contacted with the reasons for the interaction. Officers should communicate the reasons for the necessity of contact with citizens to the extent this is possible, in light of investigatory and safety concerns.

IV. PROCEDURES FOR CONSENSUAL CONTACTS, STOPS, PAT DOWNS

A. Consensual Contact

Officers are encouraged to initiate consensual contacts with individuals in the community in order to gain a more thorough knowledge of their beats and the community.

Consensual contacts are different from detentions or arrests, in that they do not involve the "seizure" of persons within the meaning of the Fourth Amendment. Officers do not need "reasonable suspicion," "probable cause," or any other specific indication of criminal activity in order to initiate this type of contact.

1. Initiation of a Consensual Contact

Officers may find it necessary to investigate the activities of a person when they do not possess sufficient information to make a detention or arrest. In such a case, the officers may initiate a contact with the person in any place in which the officer has a right to be. Unless an officer concludes that an arrest should be made or that a detention is reasonable, communications with a private person should begin with a consensual conversation that does not imply detention or arrest.

2. The Reasonable Person Test

The test: Would a reasonable person under the same or similar circumstances believe that he or she is free to leave?

It is not what the person contacted believes or should believe. It is what a reasonable person in the same circumstances would believe.

If a reasonable person would not believe he has a choice under the circumstances, then the person contacted is being detained, and absent sufficient legal cause to detain the person, it is an illegal detention.

3. Conduct During Consensual Contacts

Although no legal cause need be present for the officer to initiate a "contact," the persons contacted may not be halted, detained, or frisked against their will. They may not be required to answer questions or to cooperate in any way, if they do not wish to do so. If they refuse to cooperate, they must be permitted to go on their way, unless the officer has developed reasonable suspicion to detain or probable cause to arrest. If it seems appropriate under the circumstances, however, the person may be kept under surveillance. Since a consensual contact is not a stop or an arrest, and those persons contacted may be innocent of wrongdoing of any

NEW SECTION

kind, officers should take special care to act in a restrained and courteous manner.

Note: Except in situations that would jeopardize an investigation, officers shall ensure that all persons contacted are advised of the officer's affiliation with the Police Department, if it is not apparent by the officer's appearance.

4. Reporting Consensual Contacts

Officers are expected to make a variety of contacts with members of the community throughout each work shift. Contacts that do not lead to enforcement action may be documented on the Officer's Daily Journal, at the officer's discretion. If enforcement action results from a consensual contact, the resulting citation, warning, field interview, juvenile contact report, arrest or detention report shall be documented on the Officer's Daily Journal.

B. Detention

NEW

A detention, also referred to as a "stop", occurs when officers use their authority to compel a person to halt, to remain in a certain place, or to perform some act, such as walking to a nearby location. Courts have used the terminology "investigative stop" for a detention. A detention is allowed so an officer may have a reasonable amount of time to investigate a person's possible involvement in actual or perceived criminal activity, allowing the officer to make an informed decision whether to arrest, or to release, the subject.

If the persons have been told they are not free to leave the officer's presence, a detention has occurred. When conducting a detention, the officer shall notify the subject contacted that he or she is no longer free to leave. However, officers are not required to make such a notification if it would hamper an investigation or jeopardize the officer's safety.

NEW

1. If an officer reasonably suspects that a person has committed, is committing, or is about to commit any crime, the authority to detain that person exists. Courts have used the terminology "Criminal activity is afoot" to describe these circumstances. The officer may exercise this authority in any place that the officer has the right to be. Both pedestrians and persons in vehicles may be detained. A detention is warranted if there is a reasonable suspicion by the officer that:
 - a. Some activity relating to crime has taken place, is presently taking place, or is about to occur; and,
 - b. The person to be stopped or detained is involved in that activity.

2. “Reasonable suspicion” is a term that is not capable of precise definition; it is more than a hunch or mere speculation on the part of an officer, but less than the probable cause necessary for arrest. It may arise out of a contact, or it may exist prior to a contact. The following list contains some, but certainly not all, factors that should be considered in determining whether reasonable suspicion exists for a detention.

Note: A single factor listed below, or a combination of factors, may or may not individually justify a detention. An officer shall consider the totality of the circumstances present when deciding whether or not a detention is reasonable.

a. Factors to Consider Regarding a Person's Appearance:

- (1) The detainee fits the description of a person wanted for a known offense;
- (2) The person appears to be suffering from a recent injury; or,
- (3) The person appears to be under the influence of alcohol, drugs or other intoxicants.

b. Factors to Consider Regarding a Person's Behavior/Actions:

- (1) The person is fleeing from an actual or possible crime scene;
- (2) The person is behaving in a manner indicating possible criminal conduct;
- (3) The person was overheard making incriminating statements; or,
- (4) The person is associating himself/herself with someone the officer determined to be reasonably suspicious.

c. Factors to Consider Regarding Prior Knowledge of the Person:

- (1) The person has an arrest or conviction record; or,
- (2) The person is known to have committed an offense similar to the one that just occurred, or is about to occur.

d. Factors to Consider Regarding Demeanor

- (1) The person's answers are evasive, suspicious, or incriminating; or,
- (2) The person is excessively nervous during the consensual contact.

e. Factors to Consider Regarding the Location of the Detention:

- (1) The person is near the location of a known offense soon after its commission; or,
- (2) The person is in an area known for a particular criminal activity and it is that type of activity that the person is thought to have committed, is committing, or is about to commit.

Note: Officers are cautioned that the courts find no credence in the term "high crime area", and that the term should be avoided. If reference is to be made to the area of the detention, officers should be able to articulate specific facts concerning that area (i.e., four commercial burglaries in the past week within several blocks of the location of the stop; 25 acts of vandalism within the past month at San Diego High School, etc.).

f. Factors to Consider Regarding the Time of Day:

- (1) It may be unusual for people to be in that area at that particular time; or,
- (2) It is the time of day or night during which the suspected criminal activity usually occurs.

g. Police Training and Experience

The person's conduct is similar to the pattern followed in particular criminal offenses based on the investigating officer's training and/or experience in dealing with that particular kind of criminal activity.

h. Emergency Circumstances

Public safety may be endangered if investigative action is not taken.

i. Factors to Consider Regarding the Source of Information:

If the basis of the officer's reasonable suspicion is in whole, or in part, based upon information supplied by another person, the officer should consider the reliability of the source of the information. The reliability of the information includes such things as:

- (1) Whether the officer knows the informant(s);
- (2) Whether they have supplied accurate information in the past;
- (3) How they came by this information; and,
- (4) Whether this information has been corroborated in any way, prior to making the detention.

3. Every officer who conducts a detention, as opposed to a consensual contact, must be prepared to document all of those specific factors that led the officer to believe the detention was reasonable.

NEW
SECTION

4. Detention vs. Arrest

- a. If not handled properly, a "detention" could become an "arrest" which, if not supported by "probable cause" to arrest, would be illegal.
- b. General Rule: The least intrusive means should be used during a detention.
- c. The following list contains some factors that could cause a detention to turn into an arrest:
 - (1) Numerous officers involved;
 - (2) Display of weapons;
 - (3) Use of handcuffs;
 - (4) Person is placed in back of patrol car;
 - (5) Encounter is in non-public setting;
 - (6) The officer's authoritative manner and actions imply that compliance is compelled; and,

- (7) The officer did not advise the detainee of his right to terminate the encounter.

Note: The use of handcuffs or weapons, or placing someone in a patrol car do not automatically make the contact an arrest if the actions are seen as reasonably necessary under the circumstances (person attempts to flee, officer safety concerns) and the person is told that they are only being detained, as opposed to arrested.

5. Proper justification for a detention does not permit unreasonable conduct during the detention. All police activity during a detention shall be done in a reasonable manner. The courts, in determining whether the detention was reasonable and lawful, will consider every phase of a detention.

- a. Duration of the Detention

A person stopped pursuant to this procedure may be detained for a reasonable amount of time under the circumstances. Officers should detain a person only for the length of time necessary to determine if the person should be arrested or released.

- b. Scope of the Detention

A reasonable on-the-scene investigation is all that is authorized by law during a detention. Therefore, an officer shall not move a detainee unless:

- (1) The officer obtains the detainee's consent to be moved;
- (2) The officer has probable cause to arrest the detainee;
- (3) A victim cannot, for valid reasons, be brought to the scene of the detention;
- (4) The movement is for a reasonable distance and facilitates the completion of the investigation (i.e., securing the detainee in a patrol car while completing an investigation); or,
- (5) The movement is for the safety of the officer or the detainee.

- c. Explanation to a Detained Person

Officers shall act with as much restraint and courtesy towards the detained person as is possible under the circumstances. Plain-

clothes officers making a detention shall identify themselves as law enforcement officers as soon as it is appropriate. At some point during the detention, the officer should give the detainee an explanation of the purpose of the stop, unless such an explanation would jeopardize officer safety or hamper an investigation.

d. Questioning of a Detained Person

The officer may direct questions to detained persons for the purpose of obtaining their name, address, and an explanation of their presence and conduct. The detained person may not be compelled to answer these questions, even that of identity. During this questioning, it is not necessary to advise the person of their Constitutional rights under Miranda until such time as the person is placed under arrest, or the questioning has become coercive, rather than brief and casual.

e. Effect of Refusal to Cooperate

Refusal to answer questions does not, by itself, establish probable cause to arrest, but such refusal may be considered along with other facts as an element in determining whether the investigation should be continued. However, a person who flees during a lawful detention may be arrested for a violation of Penal Code Section 148 (a)(1), provided that such flight delayed or obstructed the investigation and there is sufficient proof to show that the person knew he/she was being detained by a police officer.

f. Use of Force to Detain

Officers shall comply with Department Procedure 1.04, Use of Force, when deciding how much force, if any, should be used in effecting a detention.

6. Reporting Detentions

- a. In cases where a subject is detained and released at the scene, without being transported away from that scene, the "contact officer" shall complete a Field Interview (FI) form (ARJIS-1). The contact officer shall document in the FI those facts that led to the reasonable suspicion required to detain the subject. The contact officer shall log the FI on his/her Officer's Daily Journal.
- b. In cases where a subject is detained, transported away from the scene and later released without booking, the contact officer shall prepare a "detention only" arrest report that properly documents

the probable cause, special circumstances, or consent that was required for the detention and movement of the subject.

- c. If the need for photographs and/or fingerprints arises during the course of a detention, the person may be detained until a camera and/or fingerprinting equipment can be obtained, provided the detention does not become unreasonably long. Moving a subject to another location for photographs and/or prints requires either consent from the subject, probable cause to arrest, or special circumstances such as an injured victim, etc. Absent those exceptions, officers shall not transport a subject away from the scene for photographs and/or fingerprints. In cases where the suspect is a juvenile, the officer shall notify parents that he/she is taking photographs of the juvenile and the circumstances surrounding the incident.

C. Pat Downs

A "pat down" is a limited search for the purpose of finding weapons or other instruments that could be used against an officer. A pat down is not a search for evidence or contraband, and, absent consent, officers shall not use a pat down as a pretext to conduct an evidentiary search.

1. An officer may pat down any person who has been detained when the officer reasonably suspects that the person is carrying a concealed weapon or dangerous instrument and that a pat down is reasonable to protect the officer or others. The pat down may be conducted immediately upon making the stop or at any time during the stop whenever a "reasonable suspicion to pat down" appears.
2. "Reasonable suspicion for a valid pat down" is more than a vague hunch and less than probable cause. If a reasonably prudent officer, under the circumstances, would believe the officer's safety or that of other persons in the vicinity is in danger because a particular person might be carrying a weapon or dangerous instrument, a pat down is justified. The following list (which is not all inclusive) contains some factors that should be considered in determining whether or not reasonable suspicion exists for a pat down.

Note: A single factor listed below, or even a cluster of factors, may or may not individually justify a pat down. An officer shall consider the totality of the circumstances present when deciding whether or not a pat down is reasonable.

- a. The person's appearance – their clothes may contain a bulge that suggests the presence of an object capable of inflicting injury.

- b. The person's actions - he/she may have made a furtive movement, as if to hide a weapon. The subject may be excessively nervous during the detention. The subject may be exhibiting threatening actions or words.
 - c. Prior knowledge – the officer may know that the subject has a prior record for weapons violations or assaultive behavior.
 - d. Location – the area may be sufficiently isolated so as to limit immediate police assistance, if needed.
 - e. Time of day – darkness may inhibit visibility.
 - f. Police purpose – the officer’s detention of the subject may be for an armed, serious, or violent offense.
 - g. Companions – the officer may have detained multiple subjects. If a weapon is found on one person, it may indicate a greater likelihood that a weapon may be found on others being detained.
3. Every officer who conducts a pat down must be prepared to document those specific factors which led the officer to conclude that "reasonable suspicion" existed before the pat down began. A mere statement that the officer feared for his/her safety is not sufficient. Instead, the officer shall cite specific factors listed above.
 4. Pat downs that reveal items reasonably believed to be weapons or other dangerous objects vary slightly from those that reveal items that are reasonably believed to be an otherwise seizable item.
 - a. Weapon or dangerous instrument - if, when conducting a pat down, the officer feels an object which the officer reasonably believes is a weapon or dangerous instrument, or is a hard object which may contain such an item, the officer may reach into the area of the person's clothing where the object is located (i.e., a pocket, waistband, or sleeve) and remove the object.
 - b. Other seizable item - if, while conducting a pat down, an officer feels an object which the officer does not reasonably believe to be a weapon or dangerous instrument, but which he immediately recognizes as an item of contraband, based on the nature of the object felt, along with or in combination with other factors, the officer has probable cause to believe that a crime is being committed in the officer's presence, and the officer should tell the person he/she is under arrest for that crime. The officer may then

conduct a full custody search incidental to arrest, but must not take any step to examine the object before making the arrest. If a seizable item is not found, the person should be released.

D. Photographing Guidelines

NEW

1. The taking of a field photograph must be connected to an investigation of a crime or an arrest. All photographs taken in connection with the investigation of a crime or an arrest must be attached to the appropriate reports or forwarded to the appropriate investigative unit. Refer to Department Procedure 3.26, Media Evidence Recovery and Impounding/Preserving Procedures, for further instruction.
 2. An officer may, with the individual's consent, take a photograph in conjunction with a Field Interview (FI). That photograph must be attached to the yellow copy of the FI, which is forwarded to the appropriate investigative section.
- NEW
3. When an officer takes a photograph of a juvenile, parental notification will be made. Refer to Department Procedure 3.08, Juvenile Procedures, for guidelines for photographing juveniles and making parental notification.
- NEW
4. Officers are not to keep field photographs for the purpose of personal intelligence files or for personal use.